

California Legislature



ASSEMBLY REPUBLICAN CAUCUS

August 3, 2011

Honorable Kamala D. Harris,
Attorney General
State of California
1300 I Street
Sacramento, CA 95814

Re: Attorney General Opinion regarding the Budget Act of 2011 and accompanying trailer bills (AB 114 and AB 118), including a redefinition of General Fund revenue from the proceeds of taxes and a \$2.1 billion reduction in K-14 education funding in the 2011-12 fiscal year passed without the required 2/3rds vote to suspend the Proposition 98 minimum funding guarantee.

Dear Ms. Harris,

On June 28th, the Legislature passed the 2011-12 state budget (Senate Bill 87), Assembly Bill 114 related to education finance and Assembly Bill 118 related to finance. The Governor signed these measures into law. Assembly Bill 114 included numerous provisions related to the calculation of the 2011-12 Proposition 98 minimum funding guarantee for K-14 public schools. (Chapter 43, 2011)

I respectfully request an Attorney General Opinion to answer the following questions:

- 1) Is it lawful, given the state constitutional protection outlined by Proposition 98, for the Legislature to exclude a portion of the General Fund state sales tax increment from the revenues used to determine the Proposition 98 Guarantee outside of the Test 3B supplement? As noted below, Assembly Bill 118 diverts 1.06 percent of the existing General Fund state sales tax revenues to fund local programs, over \$5.1 billion, and Assembly Bill 114 declared that those revenues were not to be used to calculate the Proposition 98 minimum funding guarantee for the 2011-12 fiscal year. (AB 114, SEC. 15. Section 41210 of the Education Code)
- 2) If it was unlawful for the Legislature to exclude a portion of the state sales tax increment from the Proposition 98 minimum guarantee, was it lawful for the Legislature to, with a majority vote, approve a budget that funds the Proposition 98 minimum guarantee \$2.1 billion lower than it should be?

The Legislature Cannot Divert Funds To Reduce The Minimum Guarantee:

Subdivision (a) of Section 8 of Article XVI of the California Constitution is unambiguous and requires that all state revenues be applied for the support of the state's K-14 school system:

SEC. 8. (a) From all state revenues there shall first be set apart the moneys to be applied by the State for support of the public school system and public institutions of higher education.

Assembly Bill 114 attempts to, with a majority vote, redefine state revenue. A companion measure, Assembly Bill 118 included a provision which diverts 1.06 percent of the existing General Fund state sales tax revenues to fund local programs, over \$5.1 billion in 2011-12. As part of the Proposition 98 calculation, Assembly Bill 114 declared that those diverted revenues were not to be used to calculate the Proposition 98 minimum funding guarantee for the 2011-12 fiscal year. The non-partisan Legislative Analyst's Office has determined that this diversion reduced the minimum guarantee by \$2.1 billion in the 2011-12 fiscal year. In addition, AB 114 also declared that the same state sales tax revenues would not be used to calculate the Proposition 98 minimum funding guarantee in subsequent fiscal years but only if a ballot measure approved by the voters after the end of the 2011-12 fiscal year ratifies the redefinition of the revenues contained within Assembly Bill 114 and appropriates at least an equivalent amount of new General Fund revenues from the proceeds of taxes to public schools (AB 114, SEC. 15. Section 41210 of the Education Code).

For over two decades since the passage of Proposition 98 in 1988, including in the 2010-11 fiscal year, the 1.06 percentage of the state sales tax increment diverted by AB 118 was used to calculate the Proposition 98 minimum guarantee mandated by Section 8 of Article XVI of the State Constitution. These tax revenues were also used to determine which appropriate Proposition 98 Test formulae to use and the resulting "prior year" minimum guarantee.

Assembly Bill 114 recognizes the lost school funding. Assembly Bill 114 contemplates a yet-to-be-drafted voter initiative to retroactively ratify the redefinition of these revenues as non-state revenues. This initiative would also be asking voters to retroactively ratify the reduced Proposition 98 minimum guarantee. The initiative would be placed before the voters before November 17, 2012 but after the 2011-12 fiscal year. If the initiative fails to make it on the ballot or is turned down by the voters, Assembly Bill 114 requires the state to pay schools back the amount of funding lost in 2011-12 as a result of the diversion of state sales tax revenues. (AB 114, SEC 15. Section 41210 (b))

The Legislature Cannot Suspend Proposition 98 with A Majority Vote in A Test One Year:

Proposition 98 requires the state to provide the level of school funding mandated under Proposition 98, unless the legislature suspends the minimum guarantee with vote thresholds prescribed in the provisions of subdivision (h) of Section 8 of Article XVI of the State Constitution. A suspension of Proposition 98 requires the state to payback schools in a proscribed manner.

Article XVI, SEC. 8. (h) Subparagraph (B) of paragraph (3) of subdivision (b) may be suspended for one year only when made part of or included within any bill enacted pursuant to Section 12 of Article IV. All other provisions of subdivision (b) may be suspended for one year by the enactment of an urgency statute pursuant to Section 8 of Article IV, provided that the urgency statute may not be made part of or included within any bill enacted pursuant to Section 12 of Article IV.

The vote requirement for the suspension Proposition 98 is dependent on the Proposition 98 test the state finds itself in in any given fiscal year. According to both the Department of Finance and the Legislative Analyst's Office, 2011-12 will be a Test 1 year. Subdivision (h) of Section 8 of Article XVI of the State Constitution requires that any suspension of Proposition 98 in a Test 1 year be passed with an urgency statute (requiring a 2/3rds vote). The Constitutional provision explicitly states the reduction "**may not be made part of or included within any bill enacted pursuant to Section 12 of Article IV.**" AB 114 was a bill enacted pursuant to Section 12 of Article IV which was passed by a mere majority vote.

Provisions adopted in Assembly Bill 114 and the budget bill clearly indicates that the Legislature intended to suspend the Proposition 98 minimum guarantee for the 2011-12 fiscal year, because the measures 1) reduced the education appropriation below the amount required under Proposition 98 by \$2.1 billion and 2) provided a mechanism for the schools to be paid back (AB 114, Sections 15, Section 16, and Section 58). Assembly Bill 114 recognized the future obligation of the exact loss of funding created by the diverted sales tax revenues when it declared that the state should provide—"funding that would have been provided"—if the voters fail to enact one or more ballot measures before November 17, 2012 that restores the funding lost in 2011-12. That is, if the subsequent ballot measure(s) in the 2012-13 fiscal year fails or never even make it to a vote, a derived calculation of proceeds of the revenues from the same 1.06 percent sales tax would then be counted as General Fund revenue for the purposes of Proposition 98 in the 2012-13 fiscal year and going forward. This refunding mechanism would not begin until after 2011-12 fiscal year.

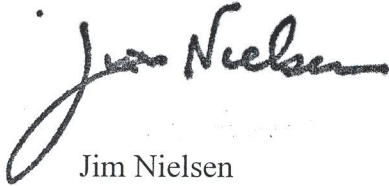
Conclusion:

Proposition 98 clearly requires all General Fund revenues to be used to calculate the minimum guarantee. Assembly Bill 118 diverted 1.06% of the state sales tax to local agencies and Assembly Bill 114 excluded those tax proceeds from the Proposition 98 minimum calculation, reducing the minimum guarantee by \$2.1 billion. AB 114 contemplates a yet to be drafted or circulated ballot measure in 2012 that would ratify the diversion of tax revenues and reduced Proposition 98 Guarantee. Proposition 98 allows the Legislature to reduce the minimum guarantee, but only if the Legislature votes to suspend the minimum guarantee with a 2/3rds vote, excepting an allowable majority vote in the Test 3B supplement. Assembly Bill 114 adopted a minimum funding level that was \$2.1 billion below the level required if Assembly Bill 114 did not declare state previously included tax proceeds as non-Proposition 98 revenues. Assembly Bill 114 was adopted with a simple majority vote of the Legislature. In the 2011-12 fiscal year the state will be in Test 1. It appears then, that if during the 2011-12 fiscal year, the

provisions of Assembly Bill 118 and Assembly Bill 114 combined with the enactment of the Budget Act of 2011 and related measures and continuous appropriations, the entirety of funding appropriated to K-14 public schools mandated by the State Constitution during the 2011-12 school year, also known as the Proposition 98 minimum funding guarantee, will not be met.

The California Constitution clearly makes education the state's number one budget priority. Your legal analysis of the adopted 2011-12 budget, Assembly Bill 118 and Assembly Bill 114 will ensure that the Legislature does not manipulate Proposition 98 to the detriment of California's 6 million school children today or in the future.

Sincerely,



Jim Nielsen
Vice-Chair Assembly Budget
Assemblyman, 2nd District



Brian Nestande
Assembly Republican Caucus Chair
Assemblyman, 64th District



Brian Jones
Deputy Republican Floor Manager
Assemblyman, 77th District